

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.13667 of 2006

Date of Decision : April 17, 2007.

Dharampal Singh		Petitioner
Vs.		
The Union of India and others		Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR.
HON'BLE MR.JUSTICE L.N.MITTAL.

* * *

Present : Mr.P.R.Yadav, Advocate
for the petitioner.

Mr.S.K.Sharma, Central Govt. Counsel
for the Union of India.

Mr.N.C.Kinra, Advocate
for respondent no.6.

* * *

J.S.KHEHAR, J. (Oral) :

It is not a matter of dispute that the petitioner and respondent no.6 were both inducted into the service of the respondents as Nursing Assistants. The admitted factual position in the pleadings is that the petitioner was appointed as Nursing Assistant on 16.02.2004 and he assumed his duties on 26.02.2004, whereas respondent no.6 was appointed on 08.03.2004 and he joined his duties as such on 15.03.2004. On the basis

of the aforesaid factual position, learned counsel for the petitioner states that the petitioner is senior to respondent no.6.

Through the instant writ petition, the petitioner has impugned the order dated 25.07.2006 whereby the services of the petitioner were terminated with effect from 31.08.2006 due to inadequate work load. The solitary contention of the learned counsel for the petitioner is that in case of retrenchment on account of inadequate work load, it was imperative for the respondents to have followed the principle of 'first come last go' and/or adopt the principle of retaining the senior, yet the respondents wrongfully terminated the services of the petitioner on 25.07.2006 and retained respondent no.6 in their employment. This, according to the learned counsel for the petitioner, not only violates the principle of 'first come last go' but also negates the superior right of the petitioner in terms of the seniority over respondent no.6.

In the joint written statement, filed on behalf of respondents no.1 to 5, it is inter alia asserted as under :-

“.....It is also not denied that since the authorized strength of Nursing Assistant in ECHS Polyclinic, Jhajjar was only one; hence a letter was issued to the petitioner for termination of his service with effect from 31.08.2006 as per the terms of the contract, since the workload pertaining to his trade was inadequate at that time.”

Despite the aforesaid assertion, it is the vehement contention of the learned counsel for the respondents that principle of 'last come first go' is not applicable to the facts and circumstances of the present case.

Having considered the entire matter in its totality, we are of the view that some principle ought to have been applied so as to effect

retrenchment on account of inadequate work load. It was open to the respondents to adopt any reasonable principle for the purpose, namely, the principle of 'first come last go' or the retention of senior and the retrenchment of the junior. Unfortunately, the respondents did not adopt any such rule. There is no basis, whatsoever, depicted in the written statement filed by the respondents, as to why respondent no.6 was retained in service while the petitioner's services were terminated.

The only reason depicted in the impugned order terminating the services of the petitioner is the availability of inadequate work load. In such circumstances, we have no other alternative but to set aside the said impugned order wherein the respondents preferred a person with inferior rights over the petitioner, who was not only inducted into the service of the respondents against the same post before respondent no.6, but on the aforesaid basis, must also be deemed to be senior to respondent no.6.

In spite of the determination rendered herein above by us, learned counsel for respondents no.1 to 5 has invited our attention to yet another reason which was the basis for terminating the services of the petitioner. The aforesaid basis stands expressed in paragraph 9 (iii) of the joint written statement filed on behalf of the respondents, relevant extract whereof is being reproduced hereunder :-

“.....In this regard, it is submitted that the petitioner had been verbally warned by the Ex. Medical Officer as well as by the Ex-Officer-In-Charge of ECHS Polyclinic, Jhajjar to improve his attitude and performance but when the petitioner did not improve his attitude during the course of service & found careless & irresponsible, then he was given counseling in writing by Col. M.S.Dhankar (Retd.) Officer-In-Charge of ECHS

Polyclinic, Jhajjar on 23.10.2004. It is further submitted that the integrity of the petitioner was found doubtful and the same was also reported to Station Cell, Ambala Cantt by Ex-Officer-In-Charge of ECHS Polyclinic, Jhajjar on 16.04.2005.”

It is not possible for us to accept the instant plea raised on behalf of the respondents for a variety of reasons. Firstly, the impugned order states only one reason for terminating the services of the petitioner, namely, inadequate work load. It has now been authoritatively held by the Apex Court in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*** reported as ***AIR 1978 SC 851***, that only such reasons, as have been enumerated in the impugned order, can be taken into consideration to determine its validity and not any other reasons which have been expressed in the pleadings of the case. Relevant extract from the aforesaid judgment of the Apex Court is being reproduced hereunder :-

*“.....when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in ***Gordhandass Bhanji (AIR 1952 SC 16) (at p.18)*** :*

“Public orders publicly made, in exercise of a statutory authority

cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

It is clear that the respondents cannot raise a plea in addition to the plea advanced in the impugned order to justify the same.

Secondly, the basis now taken for justifying the termination of the services of the petitioner with effect from 31.08.2006, relates to issues of misconduct. In case the services of the petitioner were terminated on such basis, it was imperative for the respondents to hold a departmental inquiry, afford an opportunity of hearing to the petitioner and thereafter take such action, as was permissible in accordance with law.

Thirdly, even though the aforesaid allegations have now been projected as basis for terminating the services of the petitioner, it is apparent that the petitioner was allowed an extension of his employment for a period of one year on 24.02.2005 and thereafter yet another extension for a period of one year with effect from 24.02.2006. In case the work and conduct of the petitioner was unsatisfactory, as is stated to be projected for termination of the services of the petitioner, such extensions could not have been

granted to him.

For the reasons recorded herein above, we are satisfied that the impugned order of termination dated 25.07.2006 (Annexure P-5) deserves to be set aside. The same is accordingly set aside. The petitioner shall also be entitled for all consequential benefits.

(J.S.KHEHAR)
JUDGE

April 17, 2007
monika

(L.N.MITTAL)
JUDGE